

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JUN 29 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Price Cap Performance Review)
for Local Exchange Carriers)

CC Docket No. 94-1

REPLY COMMENTS OF THE STATE OF HAWAII

The State of Hawaii, by its attorneys,¹ hereby replies to comments submitted in the above-captioned proceeding which suggest that American Telephone and Telegraph ("AT&T") might deaverage interexchange rates. Due to the historical pattern of discrimination that Hawaii has experienced in telecommunications services, it has a strong interest in the maintenance of the Commission's rate integration and geographic averaging policies.

In AT&T's comments in this proceeding, after observing that zone density pricing differentials should be permitted for additional access services only upon a clear and convincing showing by local exchange carriers of geographic cost differences for the service in question, AT&T remarked:

Such a showing is also necessary because zone density pricing is potentially inconsistent with the Commission's long-standing commitment to geographically averaged interexchange rates. A likely consequence of zone density pricing for access services is that interexchange service rates will have to vary based on differences in the LECs' zone pricing. The

¹ These comments are submitted by the State of Hawaii, acting through its Governor and the State's Department of Commerce and Consumer Affairs.

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Commission will therefore want to ensure that the underlying LEC rates have been adequately justified before allowing them to become effective.

Further, to prevent undue rate increases for rural or residential access customers, the Commission should establish a "low density index" for the LEC zone density rates, similar to AT&T's residence index, with a 1 percent upward ceiling. As the Commission determined when it adopted the AT&T index, such an index will help ensure that overall rates for residential customers remain within a zone of reasonableness, and is consistent with the Commission's policies protecting consumer interests. A price cap LEC low density index would likewise help protect rural customers of high cost LECS by forestalling interexchange rate deaveraging.

Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Comments of AT&T at 44-45, (filed May 9, 1994) (citations omitted and emphasis added).

This is not the first time that AT&T has suggested that its might have to deaverage interexchange rates. In CC Docket 87-313, the previous price cap proceeding, AT&T stated that it would commit to nationwide geographic averaging only "to the extent [that] access charges or other local costs are deaveraged," and that it would "require the flexibility . . . to deaverage its own rates, if competitive pressures warranted such an adjustment." Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Comments of AT&T at 61-62.

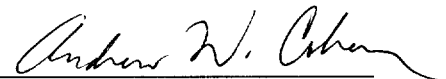
In response to those earlier comments, Hawaii urged the Commission not to allow a LEC price cap proceeding to serve as a vehicle for changing its historic policy favoring geographic averaging. Reply Comments of the State of Hawaii at 4-8, CC Docket No. 87-313, (filed Sep. 9, 1988) ("1988 Reply Comments"). A copy of the State's 1988 Reply Comments is attached.

In its order in the earlier price cap proceeding, the Commission extolled the benefits of geographic rate averaging and assured commenters that it had taken no action that would put geographic rate averaging at risk. Policy and Rules Concerning Rates for Dominant Carriers, CC Docket 87-313, Report and Order and Second Further Notice of Proposed Rulemaking, 8 FCC Rcd 2873, 3132 (1989). The Commission further stated that any future proposal by AT&T to deaverage its rates would "be met with the full measure of Commission scrutiny." Id. at 3134.

The State of Hawaii reiterates the importance of geographically averaged interstate interexchange rates to its citizens. The State's concerns are set forth in detail at pp. 3-8 of its 1988 Reply Comments. The Commission should ensure that its order in this proceeding is not used by AT&T as a vehicle to justify geographic rate deaveraging.

Respectfully submitted,

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)	
Policy and Rules Concerning)	CC Docket No. 87-313
Rates for Dominant Carriers)	
)	

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REPLY COMMENTS OF THE STATE OF HAWAII

The State of Hawaii ("State" or "Hawaii"),¹ by its attorneys, submits these Reply Comments in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned proceeding.²

I. PRICE CAP REGULATION SHOULD NOT BE ADOPTED AT THIS TIME

A. The Case Has Not Been Made That Price Cap Regulation Will Benefit The Public

In each round of Comments in this proceeding, the State of Hawaii has concluded, after careful and extensive consideration, that price cap regulation should not be adopted at this time.³ For the reasons stated below, the State continues to

¹/ These comments are filed by the State of Hawaii, acting through its Governor and the State's Department of Commerce and Consumer Affairs.

²/ Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, F.C.C. 88-172, Further Notice of Proposed Rulemaking (released May 23, 1988) [hereinafter Further Notice].

³/ The State of Hawaii filed both Comments and Reply Comments in response to the Commission's initial Notice of Proposed (Footnote 3 continued on next page)

assert that those advocating price cap regulation still have not made the case that price caps will benefit the public. Until such a case is made, the Commission should not proceed with the price cap proposal.

B. No Party Has Rebutted That Forward-Looking Data is an Essential Component of The Price Cap Model

The State reiterates, and no party has rebutted, that forward-looking cost data is an essential component of the price cap model, or any other change in the regulation of dominant carriers. In deriving its price cap model, however, the Commission has relied entirely on historic data. For instance, in adopting the productivity factor and consumer price dividend of minus 3%, the Commission did not, as requested by the State and others, analyze future cost trends or require the carriers to produce forecasted and detailed cost data.⁴ Because there is every reason to believe that costs are declining, the Commission must incorporate forward-looking data into the price cap formula in order to ensure that such rates accurately reflect both current and projected costs. Only in this way will the Commission have any way of evaluating whether its proposal is or is not likely to provide better results for users than rate-base

(Footnote 3 continued from previous page)
Rulemaking. See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Notice of Proposed Rulemaking, 2 F.C.C. Rcd. 5208 (1987) [hereinafter Notice]. The State also filed Comments in response to the Commission's Further Notice.

4/ See, e.g., Further Notice at ¶¶ 387-389.

regulation.⁵ Forward-looking data is, therefore, an essential component of the Commission's price cap proposal.

**2. The Commission Must Mandate
Quality-of-Service Standards
And Monitoring Procedures**

The State continues to stress that price caps incorporate incentives for carriers to reduce operating expenditures. Such cost-cutting incentives threaten the quality of telecommunication services, and no party has shown that this problem has been solved. Thus, the price cap proposal must not be adopted until the Commission has provided the proper quality-of-service standards, and until it has established monitoring procedures to ensure that carriers meet those standards.

**II. IF THE COMMISSION PROCEEDS WITH PRICE CAP
REGULATION, IT MUST INCORPORATE THE
FOLLOWING RULES ADDRESSING THE STATE
OF HAWAII'S SPECIFIC CONCERNS**

**A. The Commission Must Make A Specific
Enforceable Commitment To Its Long-Standing
Policy of Geographically Averaging Toll Rates**

Foremost among the State of Hawaii's concerns in this proceeding are the enforcement and maintenance of geographically

^{5/} The State reiterates that, unlike the Commission, the Office of Telecommunications ("OFTEL") of the United Kingdom ("U.K.") engages in extensive modeling of British Telecom's ("BT's") projected costs, rather than mere historical costs, in calculating its productivity formula. OFTEL's forward-looking calculation results in a productivity figure of 4.5%, as compared to the Commission's 3.0% figure. See Hawaii Comments to Further Notice at 9-10 n.12.

averaged domestic toll rates -- such as MTS, WATS, and 800 service.⁶ The Commission must make a specific and enforceable commitment to this long-standing policy now, before granting dominant carriers the increased flexibility to change their rates.

1. Hawaii Has Experienced An Historical Pattern Of Discrimination

The State is particularly concerned about geographic averaging due to the historical pattern of discrimination that it has experienced in telecommunications services.⁷ To date, the Commission has done much to encourage improvement in the variety, the quality, and the pricing of telecommunications services to points in Hawaii. Some of the Commission's ameliorative policies, for example, include its rate- and service-integration policies, and its support for the use of geographically averaged domestic toll rates. The State does not want such progress in telecommunications services eroded.

6/ The State vigorously supports both the Commission's long-standing policy of rate integration and the resulting use of geographic averaging. In 1972, the Commission adopted its rate-integration policy. See Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities, 35 F.C.C.2d 844, on reconsideration, 38 F.C.C.2d 665 (1972). That policy dictates that the rate structure used for the Mainland states must, likewise, be applied to the State of Hawaii. A carrier that operates otherwise, violates Section 202 of the Communications Act. 47 U.S.C. § 202(a). Although the rate-integration policy does not mandate that a carrier choose a particular rate structure, the Commission historically has supported the geographic-averaging structure as the fairest and most rational method of integration for all states.

7/ See, e.g., Hawaii Comments to Further Notice at 12-14.

2. Geographic Averaging Furthers The
Fundamental Goals of the Commission's
Telecommunications Policy

It is well recognized that geographic averaging furthers the fundamental goals of the Commission's telecommunications policy. Those goals dictate that rates and services should be provided on a nondiscriminatory, universal, and reasonable basis throughout the United States. Accordingly, numerous parties submitted Comments in response to both the Commission's Notice and the Further Notice advocating the retention of geographically averaged toll rates.⁸

In the latest round of Comments, for example, the Alabama Public Service Commission asserted that geographic averaging is "absolutely essential" for affordable long-distance service for the rural subscriber.⁹ Similarly, the National Rural Telecommunications Association ("NRTA") strongly stated that the Commission should require nationwide MTS and WATS rate averaging to protect rural ratepayers from unduly large common-line cost burdens, as well as to let them share in the benefits of urban,

8/ See, e.g., Comments to Further Notice of the following parties: State of Alaska, Alabama Public Service Commission, American Petroleum Institute ("API"), Century Telephone Enterprises, Inc. ("CTE"), GTE Corporation, International Communications Association ("ICA"), National Rural Telecommunications Association ("NRTA"), National Telephone Cooperative Association ("NTCA"), Pacific Bell/Nevada Bell, Public Service Commission of Wisconsin, Virginia State Corporation Commission, and the United States Telephone Association ("USTA").

9/ See Alabama Comments to Further Notice at 3-4.

or high-volume area, competition.¹⁰ Virginia -- a state that currently operates under a "deregulated" telecommunications policy -- still advocates the retention of geographic averaging.¹¹ Likewise, the State of Alaska focused on the issue of geographic averaging, stating that there is "no assurance, or reason to believe, that geographic rate averaging will continue" if the Commission removes the current regulatory framework.¹² Additionally, GTE supported geographic averaging by recommending that the structure of AT&T's MTS service should not be changed, even though overall changes in the aggregate level of MTS prices may occur.¹³ Hawaii endorses these and other parties' contentions supporting geographic averaging. The State submits that it is imperative that the Commission maintain its current policy of geographically averaged toll rates not only because it ensures that rates and services will continue to be provided to Hawaii and those who communicate with it on a nondiscriminatory, universal, and reasonable basis, but also because the policy benefits all of the United States.¹⁴

^{10/} See NRTA Comments to Further Notice at 2. Hawaii, as a state situated some distance from the Mainland, shares interests similar to those concerning rural ratepayers on the Mainland. The United States Telephone Association ("USTA") also recognized that averaging is essential to guaranteeing that all customers benefit from the implementation of price cap regulation. See USTA Comments to Further Notice at 23.

^{11/} See Virginia Comments to Further Notice at 3.

^{12/} See Alaska Comments to Further Notice at 3.

^{13/} See GTE Comments to Further Notice at 7.

^{14/} Several parties asserted that the Commission policy of depooling access rates will, at some point, threaten the (Footnote 14 continued on next page)

3. No Party Has Disputed That Price Cap Regulation Threatens Geographic Averaging

No party in this proceeding has disputed that, by relaxing the regulatory scrutiny of the dominant carriers, price cap regulation threatens the maintenance of geographic averaging. Unless geographic averaging is expressly retained, the advantages of competition would flow only to a limited number of points, and the competitive benefits claimed under price caps would not be available to rural and many other points in the United States.¹⁵

4. The Commission Must Explicitly Prohibit Deaveraging

Although the Commission claimed a continued adherence to geographically averaged toll rates in the Further Notice, its definitive position on rate averaging remains unclear.¹⁶ The Commission must, therefore, explicitly prohibit deaveraging.

(Footnote 14 continued from previous page)
continued use of geographic averaging of toll rates. See, e.g., Wisconsin Comments to Further Notice at 2-3. Hawaii neither disputes nor supports these contentions. Rather, Hawaii recognizes that there are many costs that vary by locale, such as labor and other local costs. Although the de-pooling of access rates creates an additional variable, that variable is not determinative.

^{15/} Indeed, in its Comments, AT&T stated that it would commit to nationwide geographic averaging only "to the extent [that] access charges or other local costs are deaveraged," and that it would "require the flexibility . . . to deaverage its own rates, if competitive pressures warranted such an adjustment." AT&T Comments to Notice at 61-62. In its latest comments, AT&T repeated its lack of commitment to geographic averaging, further evincing the infirmity of that policy under price caps. See AT&T Comments to Further Notice at 7.

^{16/} For examples of the Commission's equivocation, see Hawaii Comments to Further Notice at 18-20.

Accordingly, in its final price cap order, the Commission should formally adopt the following rule:¹⁷

"AT&T cannot depart from the present national-average rate structure¹⁸ for MTS, WATS, and 800 service offerings unless and until it secures a Commission determination that such departure is in the public interest."

B. Current IMTS Rates Must Not Be Used To Set Initial Price Caps.

The parties in this proceeding have not addressed the fact that Hawaii's current International Message Telecommunications Service ("IMTS") rates remain at excessive levels. In its earlier Comments, the State discussed the fact that the providers of IMTS in Hawaii have escaped supervision of their services.¹⁹ As a result, IMTS rates are not rate integrated, are artificially inflated, and are generating excessive earnings.²⁰

^{17/} Section 201(b) of the Communications Act authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest" to carry out the provisions of the Act. 47 U.S.C. § 201(b).

^{18/} The "national-average rate structure" provides that the level of charges for a call of a given distance, time, and duration is the same regardless of the location of the two terminal points within the 50 states, the District of Columbia, and Puerto Rico. Under the present structure, the rate per mile sharply declines as the length of the call increases.

^{19/} See Hawaii Comments to Further Notice at 20-23.

^{20/} For example, GTE Hawaiian's Separated Results of Operation -- FCC Basis for July 1986-June 1987 show a combined 16.22% annualized rate of return on "adjusted interstate" services. Because a majority of these services are limited to a 12.0% F.C.C. prescribed rate of return for local exchange carriers, the remaining services, which include IMTS, must be generating a return far in excess of 16.22%. See Hawaii Comments to Further Notice at app. A. See also Authorized Rates of Return for the Interstate Services of AT&T (Footnote 20 continued on next page)

By capping existing IMTS rates for Hawaii, the Commission will automatically approve rates that have been left unregulated and, therefore, do not accurately reflect carrier costs. Thus, setting caps at current Hawaii IMTS levels would be blatantly unfair. While the State has seen recent reductions in IMTS rates by AT&T, there is no indication that these reduced rates do not remain excessive.²¹ If the Commission, therefore, proceeds with the price cap proposal, current IMTS rates for Hawaii must not be used to set initial price caps.

III. CONCLUSION

The State of Hawaii remains supportive of efforts to find better ways of regulating dominant telecommunications carriers. After both Commission Notices and after scores of interested-party Comments, however, the State reiterates that the case still has not been made that price cap regulation will benefit the public. The price cap proposal simply lacks the necessary specific forward-looking, as opposed to historic, evidence to support its replacement of rate-of-return regulation. Because there is every reason to believe that costs are

(Footnote 20 continued from previous page)

Communications and Exchange Telephone Carriers, CC Docket No. 84-800, F.C.C. 86-354 at ¶ 52, 89-90 (released August 25, 1986). It is also important to note that, in this proceeding, GTE has failed to acknowledge and discuss the implications of price cap regulation for its services other than local exchange access, i.e., the IMTS services offered by GTE Hawaiian. GTE's Comments address only the "domestic" local exchange carrier business, and ignore the broader scope of the Further Notice. See GTE Comments to Further Notice at 1.

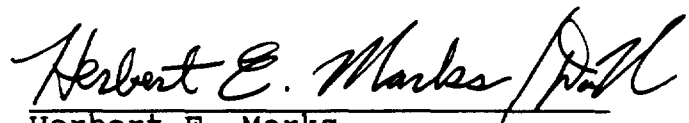
21/ See, e.g., AT&T Tariff Transmittal No. 1303, August 5, 1988.

declining, the Commission must use such forward-looking data as a component in the price cap formula. In addition, the Commission must establish and enforce the necessary quality-of-service standards in conjunction with the proposal.

Beyond these general concerns about the flawed price cap proposal, the State has two specific concerns that the Commission must recognize if it decides to proceed with price cap regulation. First, the Commission must commit to its long-standing policy of geographically averaging toll rates and must specifically rule to that effect. Such a commitment not only will benefit Hawaii, but -- as the Commission has recognized -- also will benefit all the states. Second, the Commission must recognize that IMTS rates in Hawaii are not being supervised. Because the lack of supervision has created excessive rates and has generated excessive earnings, the Commission must not use Hawaii's existing IMTS rates to set initial price caps.

Respectfully submitted,

THE STATE OF HAWAII

A handwritten signature in dark ink, appearing to read "Herbert E. Marks" followed by a stylized flourish.

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